

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARGARITA HERNANDEZ *as representative*
of the estate of LEONICIO HERNANDEZ,

Plaintiff,

v.

HOME DEPOT U.S.A., INC.,

Defendant.

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CIVIL ACTION H-09-2683

ORDER


Pending before the court is defendant Home Depot U.S.A., Inc.’s motion for summary judgment. Dkt. 16. Upon consideration of the motion, and the applicable law, the motion is GRANTED. Plaintiff failed to respond to Home Depot’s motion. Under the Local Rules of the Southern District of Texas “[f]ailure to respond will be taken as a representation of no opposition.” S.D. TEX. LOC. R. 7.4.

However, even if the plaintiff had responded, summary judgment would still be appropriate for the defendant. In this case, the plaintiff’s decedent slipped and fell on wet concrete outside a Home Depot store as he approached the store during a rain shower. Dkt. 16, Ex. A. Home Depot owes its invitees, like plaintiff, a duty “to exercise reasonable care to protect against danger from a condition on the land that creates an unreasonable risk of harm of which the owner or occupier knew or by the exercise of reasonable care would discover.” *CMH Homes, Inc. v. Daenen*, 15 S.W.3d 97, 101 (Tex. 2000). Under Texas law, naturally occurring conditions—like mud or ice caused by rain—are not conditions posing an unreasonable risk of harm for premises liability purposes absent the intervention of some unnatural contact. *Scott & White Memorial Hosp. v. Fair*, 310 S.W.3d 411,

412–13 (Tex. 2010). Here, the record demonstrates that Home Depot did nothing to cause the rain or to make the sidewalk slippery. Therefore, plaintiff’s negligence and premises liability claims fail. Accordingly, Home Depot’s motion for summary judgment is GRANTED.

It is so ORDERED.

Signed at Houston, Texas on August 25, 2010.



Gray H. Miller
United States District Judge